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In re Application of :
BLOECHL et al :
Application No.: 09/445,261 : DECISION ON
PCT No.: PCT/IB98/01017 :
Int. Filing Date: 1 July 1998 : PETITION UNDER
Priority Date: 5 March 1998 :
Attorney's Docket No.: SZ997-026 : 37 CFR 1.137(b)
For: MATERIAL WITH REDUCED OPTICAL :
ABSORPTION :

This is in response to the "Petition For Revival Of An Application for Patent Abandoned Unintentionally Under 37 CFR 1.137" filed on 25 September 2001.

BACKGROUND

On 1 July 1998, this international application was filed, claiming an earliest priority date of 5 March 1998.

On 29 December 1999, a Demand electing the United States was filed in this international application. Accordingly, the deadline for paying the basic national fee in the United States under 35 U.S.C. 371 and 37 CFR 1.495 was 29 June 2001. This international application became abandoned with respect to the United States at midnight on 5 September 2000 for failure pay the basic national fee.

On 02 December 1999, applicant filed in the United States Patent and Trademark Office (USPTO) a transmittal letter for entry into the national stage in the U.S. under 35 U.S.C. 371. The transmittal letter was not accompanied by the U.S. basic national fee nor an executed declaration.

On 04 April 2001, the USPTO mailed applicant Notification of Abandonment (Form PCT/DO/EO/909) indicating the application was abandoned because a missing declaration.

On 25 December 2001, applicant filed in the United States Patent and Trademark Office (PTO) the instant petition, accompanied by, *inter alia*, an executed declaration and the petition fee for revival of an unintentionally abandoned application..

DISCUSSION

A grantable petition to revive an abandoned application under 37 CFR 1.137(b) must be accompanied by (1) the required reply, unless previously filed. In a nonprovisional application abandoned for failure to prosecute, the required reply may be met by the filing of a continuing application; (2) the petition fee as set forth in § 1.17(m); and (3) a statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to this paragraph was unintentional. The Commissioner may require additional information where there is a question whether the delay was unintentional; and (4) any terminal disclaimer (and fee as set forth in § 1.20 (d)) required pursuant to paragraph (c) of this section.

Petitioner has provided: (2) the petition fee set forth in §1.17(m) and (3) the proper statement under 137(b)(3). In this application, no terminal disclaimer is required.


Petitioner, however, has not provided (1) the proper reply because the basic national filing fee has not been submitted.

Accordingly, the petition is deemed to not to satisfy requirement (1) under 37 CFR 1.137(b).

DECISION

The petition under 37 CFR 1.137(b) is **DISMISSED** without prejudice.

If reconsideration of the merits of the petition under 37 CFR 1.137(b) is desired, applicant must file a request for reconsideration within **TWO (2) MONTHS** from the mail date of this Decision. Failure to timely submit the proper reply will result in abandonment of the application. Any reconsideration request should include a cover letter entitled "Renewed Petition Under 37 CFR 1.137(b)." Extensions of time are available under 37 CFR 1.136(a).


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